

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Boysin Ralph Lorick and
Cynthia Theresa Lorick,

Chapter 11

Case No. 16-45645-NHL

Debtors.

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**MOTION FOR APPOINTMENT OF CHAPTER 11 TRUSTEE,
OR, ALTERNATIVELY, CONVERSION TO CHAPTER 7**

Wells Fargo Bank, N.A., as Trustee for the registered holders of Sovereign Commercial mortgage Securities Trust, 2007-C1, Commercial Pass-Through Certificates, Series 2007-C1 (the “Lender”), a secured creditor of the above-captioned debtors (the “Debtors”), submits this motion (the “Motion”) for entry of an order, pursuant to section 1104 of chapter 11 of title 11, United States Code (the “Bankruptcy Code”) appointing a chapter 11 trustee in this case. In support of the Motion, the Lender shows the Court as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this chapter 11 case (the “Chapter 11 Case”) in this District is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On December 15, 2016 (the “Petition Date”), the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.¹ The Debtors have continued as debtors and

¹ The chapter 11 petition was the Debtors’ second bankruptcy petition filed within six months. On July 20, 2016, the Debtors filed a voluntary chapter 13 petition through then-counsel Frank Wharton, Esq. Case No. 16-43194-nhl. The Debtors’ chapter 13 case was dismissed on October 11, 2016, because the Debtors’ noncontingent, liquidated, secured debts exceeded the \$1,149,525 limit for eligibility under chapter 13 pursuant to section 109(e) of the Bankruptcy Code.

debtors-in-possession in the operation of their business pursuant to sections 1107 and 1108 of the Bankruptcy Code. No committee of unsecured creditors has been appointed.

3. On or about September 13, 2005, Independence Community Bank, the Lender's predecessor-in-interest, made a loan to the Debtors in the original principal amount of \$2,250,000.00. The loan was secured by a first mortgage on the 3126 Coney Island Avenue, Brooklyn, New York 11235 (the "Property").

4. The Debtors do not conduct any substantial business on the Property other than the business of operating the Property and activities incidental thereto.

5. On January 30, 2013, the Lender acting by and through Waterstone Asset Management LLC, its sub-special servicer, commenced an action to foreclose the first mortgage on the Property in the Supreme Court for the State of New York, County of Kings (the "Receiver Court"), Index Number 500469/2013 (the "Foreclosure Action").

6. On June 3, 2016, the Receiver Court entered an Amended Final Judgment of Foreclosure and Sale, providing for the scheduling of a foreclosure sale by Lender and noting that Lender was owed more than \$3,668,619.69.² Douglas Rosenberg (the "Receiver") was appointed receiver in the Foreclosure Action by order dated April 2, 2013. The Debtors repeatedly obstructed the Receiver during the course of the Foreclosure Action. Debtor Boysin Lorick failed to confirm the Property's rent rolls for the Receiver, converted over \$36,762.89 in tenant security deposits,³ and failed to return the security deposits to the Receiver, notwithstanding being ordered to do the same. On October 15, 2015, the Receiver Court adjudged Boysin Lorick to be in contempt of

² The amount owing to the Lender has increased since the entry of the judgment. On at least three occasions, the Debtors have requested a payoff letter. The Lender's counsel has provided those to the Debtors. However, the Debtors have been unwilling or unable to pay off the Lender.

³ See *Transcript of October 9, 2015 Hearing in Foreclosure Action* at 90 (relevant excerpts of which are attached hereto as Exhibit G) ("[t]here are no security deposits. Mr. Lorick spent [the security deposits].").

court for his failure to comply with orders in the Foreclosure Action. See Order, Foreclosure Action (Oct. 15, 2015) (a true and correct copy of which is attached hereto as **Exhibit A**) (the “October 15th Contempt Order”).

a. Sale of the Property in the Chapter 11 Case

7. On June 9, 2017, the Debtors filed a *Motion for an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (i) Approving Bidding Procedures and Certain Terms and Conditions of Sale, (ii) Scheduling the Deadline for an Auction and Hearing Date, and (iii) Authorizing Sale of Real Property “As Is” and “Where Is”, Free and Clear of All Liens, Claims, Encumbrances, and Interests* [Dkt. No. 67] (the “Sale Motion”) seeking to sell the Property. On July 25, 2017, the Court entered an order approving the sale procedures proposed under the Sale Motion (the “Sale Procedures Order”) and scheduling an auction for August 22, 2017 at 11:00 a.m.

8. Less than one day prior to the auction, the Debtors filed an Emergency Motion to Adjourn the auction (the “Emergency Motion”) on the basis that the Debtors had obtained alleged financing for the Property from Mohammad Choudhary (“Choudhary”), a friend of the Debtors. [Dkt. No. 80]. The Court denied the relief requested by the Debtors and ordered that the auction would proceed in accordance with the Sale Procedure Order. [Dkt. No. 82]. An auction was held on August 22, 2017.

9. A hearing on the Sale was held by the Court on August 24, 2017. By Order dated September 8, 2017 (the “Sale Confirmation Order”), the Court approved Soleyman Ghalchi as the successful bidder with a bid of \$7.35 million and Jack Geula as the backup bidder with a bid of \$6.95 million for the sale of the Property (the “Sale”) [Dkt. No. 95].

10. During a hearing held on October 26, 2017, the Court directed Debtor Boysin Lorick to turn over to Ghalchi’s counsel any and all Property leases and related documents in

Debtor Boysin Lorick's control. The Court held a hearing on November 2, 2017, and it was reported that Debtor Boysin Lorick had not complied with the Court's order to turn over the Property leases and related documents. At the November 2nd hearing, and by Order dated November 3, 2017, the Court again directed Debtor Boysin Lorick to turn over to the purchaser's counsel any and all Property leases and related documents in Debtor Boysin Lorick's control by November 6, 2017. [Dkt. No. 155]. At a hearing held on November 7, 2017, it was reported that Debtor Boysin Lorick had still not complied with the Court's orders directing him to turn over the documents.

11. As reported at the hearing on November 2, 2017, the Sale was scheduled to close during the afternoon of November 7, 2017. At the hearing before the Court on November 7, 2017, the Court ordered that the Debtors appear at the closing that afternoon and directed them to execute all necessary documents to close the Sale.

12. At the November 7, 2017 scheduled closing, Debtor Boysin Lorick appeared without Debtor Cynthia Lorick. The Debtors' counsel of record, Norma E. Ortiz, Esq., the purchaser, and the purchaser's counsel also appeared. Debtor Boysin Lorick refused to close the Sale without his proposed counsel, Karamvir Dahiya,⁴ who was allegedly out of the country [**Exhibit B**, Closing Tr. 5:18-23] (Ms. Ortiz: "But I think, Mr. Lorick, am I correct in saying that you will not execute the [quit] claim deed today? Is that correct? Mr. Lorick: Right, because I don't have representation.").

⁴ On November 1, 2017, Dahiya Law Offices, LLC filed an Application for Entry of an Order Approving its Retention as Counsel for the Debtors ("Dahiya Retention Application") [Dkt. No. 150]. The presentment date for the Dahiya Retention Application is November 20, 2017 at 12:00 p.m.

b. District Court Action

13. Prior to the scheduled closing, on October 27, 2017, the Debtors filed an action (the “District Court Action”) in the United States District Court for the Eastern District of New York against Bankruptcy Judge Nancy Hershey Lord and Debtors’ counsel of record, Norma E. Ortiz. *See Lorick v. Lord*, 17-cv-06307-ENV-JO. On October 30, 2017, the Debtors filed an emergency request to stay all proceedings in this chapter 11 case (the “Emergency Request”) [*Lorick v. Lord*, Dkt. No. 4]. Construing the Debtors’ emergency request as a request for a temporary restraining order or a writ of mandamus petition, the District Court issued an opinion (the “November 2, 2017 Order”) denying both requests for relief and casting doubt on whether the District Court had jurisdiction to entertain the balance of the complaint [*Lorick v. Lord*, Dkt. No. 6].

14. The Debtors filed an order to show cause for a preliminary injunction and a temporary restraining order on November 2, 2017 seeking to prevent the defendants from selling the Property. [*Lorick v. Lord*, Dkt. No. 7]. The District Court construed the Debtors’ order to show cause as a motion for reconsideration of the November 2, 2017 Order (the “First Motion to Reconsider”) and denied the First Motion to Reconsider by text order because the Debtors did not make a sufficient showing under the standard for reconsideration. [*See Lorick v. Lord*, text order dated November 2, 2017].

15. Not to be deterred, on November 3, 2017, the Debtors filed a letter apparently complaining about their representation in this case, which the District Court construed as a second motion to reconsider its November 2, 2017 Order (the “Second Motion to Reconsider”). On November 8, 2017, the District Court denied the Second Motion to Reconsider, finding again that the Debtors failed to meet their burden. [*See Lorick v. Lord*, text order dated November 8, 2017].

16. The Debtors have now sought an interlocutory appeal from the District Court Action. [*See Lorick v. Lord*, Dkt. No. 11].⁵

ARGUMENT

17. Section 1104 of the Bankruptcy Code Provides:

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee –

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(2) if such appointment is in the interests of creditors . . . and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104(a).

18. The Lender asserts that cause exists for the appointment of a chapter 11 trustee and that the appointment of such a trustee is in the best interests of the Debtors' estate and creditors under section 1104 of the Bankruptcy Code as a result of the Debtors' continuing, pre- and post-petition efforts to prevent the sale of the Property and to delay any meaningful reorganization. Cause further exists as a result of the Debtors' lack of candor to the Court and unauthorized use of estate funds.

19. A debtor in possession owes fiduciary duties to the bankruptcy estate, including "a duty of care to protect assets, a duty of loyalty and a duty of impartiality." *In re Bowman*, 181 B.R. 836, 843 (Bankr. D. Md. 1995). "To fulfill its duty of loyalty, a debtor in possession must

⁵ The Debtors did not identify what ruling they are appealing in the notice of appeal but based on their other filings, it is clear that the Debtors intend to continue to collaterally attack the Sale Confirmation Order.

‘avoid self-dealing, conflicts of interest and the appearance of impropriety.’ ” *In re Eurospark Industries, Inc.*, 424 B.R. 621, 627 (Bankr. E.D.N.Y. 2010) (quoting *Bowman*, 181 B.R. at 843). When determining whether cause exists under section 1104(a)(1) of the Bankruptcy Code, the court may assess both pre- and post-petition behavior of the debtor. *Schuster v. Dragone*, 266 B.R. 268, 272 (Bankr. D. Conn. 2001).

20. Courts have identified conflicts of interests held by the debtor’s management and creditors’ lost confidence in the debtor’s management as cause for appointing a chapter 11 trustee. *See, e.g., In re Marvel Entm’t Grp.*, 140 F.3d 463, 474 (3d Cir. 1998); *In re Sundale, Ltd.*, 400 B.R. 890, 909-10 (Bankr. S.D. Fla. 2009); *In re Patman Drilling Int’l, Inc.*, No. 07-34622, 2008 WL 724086, at *6 (N.D. Tex. Mar. 14, 2008); *Euro-Am Lodging*, 365 B.R. 421, 428-32 (Bankr. S.D.N.Y. 2007); *In re Cajun Elec. Power Coop., Inc.*, 191 B.R. 659, 663 (M.D. La. 1995); *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 168 (Bankr. S.D.N.Y. 1990); *In re Nautilus of N.M., Inc.*, 83 B.R. 784, 789-90 (Bankr. D.N.M. 1988).

21. With respect to the best interests of creditors and the estate, this court has opined that:

[w]hen deciding whether relief under section 1104(a)(2) is warranted a court will consider:

- (i) the trustworthiness of the debtor;
- (ii) the debtor in possession’s past and present performance and prospects for the debtor’s rehabilitation;
- (iii) the confidence – or lack thereof- of the business community and of creditors in present management; and
- (iv) the benefits derived by the appointment of a trustee, balanced against the cost of appointment.

Eurospark Industries, Inc., 424 B.R. at 627.

22. However, the standard under section 1104(a)(2) is flexible and the court should consider the practical realities and necessities of the case. *Id.* (citations omitted); *see In re Taub*, 427 B.R. 208 (E.D.N.Y. 2010) (chapter 11 trustee appointed, pursuant to section 1104(a)(2) of the Bankruptcy Code, twenty-one months following the petition date where debtor did not file a plan, made no meaningful progress toward reorganization, retained multiple attorneys, and animosity with creditors existed).

23. As noted above, the Debtors have failed to comply with multiple orders of this Court, including the Court's orders to close the Sale and the Court's directive to turn over all leases related to the Property to the purchaser's counsel, as well as the prepetition orders issued in the Foreclosure Action. The Debtors are engaged in ongoing disputes with their counsel of record. The Debtors now seek to retain new counsel, who, in conjunction with the Debtors, has already attempted to collaterally attack the Sale. In a letter dated November 1, 2017, Mr. Dahiya improperly attempted to move this Court, by letter and prior to any Court-approved retention of the Dahiya Law Offices LLC as the Debtors' counsel, for a cancellation of the Sale, dismissal of the case, and a suspension of all proceedings in this case, if the Court did not dismiss the case. [Dkt. No. 151].

24. The appointment of a chapter 11 trustee will allow this case to move forward instead of being stalled by noncompliant Debtors, who, by all indications, will continue their pattern of defiance of this Court's Orders in an attempt to prevent the Sale. A trustee should be appointed to step into the shoes of the Debtors and to fulfill any outstanding obligations of the Debtors under the Sale Order, the Sale Confirmation Order, and any other orders of this Court. A

chapter 11 trustee would be disinterested and would be better able to deal with the parties impartially to effectively and efficiently achieve a resolution to this chapter 11 case.

25. Throughout the Foreclosure Action and this chapter 11 case, certain behavior of the Debtors has come to light that reflects the Debtors' inability to maintain their debtor in possession status and further supports a finding of cause and the appointment of a chapter 11 trustee. During the Foreclosure Action, Debtor Boysin Lorick converted over \$36,762.89 in tenant security deposits and failed to turn over the security deposits to the Receiver, notwithstanding being ordered to do the same. See **Exhibit G** at 90 (“[t]here are no security deposits. Mr. Lorick spent [the security deposits].”)

26. In 2014, the Debtors received a check from the Brownstone Agency, Inc., NY on behalf of Aspen American Insurance Company in the amount of \$153,356.02 payable to Boysin Lorick, Wells Fargo Bank, N.A. as Trustee, Douglas Rosenberg, Sovereign Bank, Berkadia Commercial Mortgage, LLC, as Master Servicer, and the New York Adjustment Bureau, Inc. as insurance settlement proceeds following a fire at the Property. See **Exhibit C**, October 5, 2017 Hearing Tr. 202:9-22, Martha De Jesus Testimony; **Exhibit D**, October 6, 2017 Hearing Tr. 89:18-23, 90:16-92:21, Boysin Lorick Testimony.⁶ A copy of the check is attached hereto as **Exhibit E**. The Debtors failed to schedule the \$153,356.02 insurance check. Debtor Boysin Lorick testified that he intends to use the check to pay his prior bankruptcy counsel, Frank Wharton. See **Exhibit D**, October 6, 2017 Hearing Tr. 89:18-23, 90:16-92:21, Boysin Lorick Testimony.

27. The Debtors also failed to disclose a \$25,000 payment made post-petition to Choudhary to reimburse Choudhary for expenses he incurred while seeking financing for the

⁶ The check is currently being held by Debtors' former bankruptcy counsel, Frank Wharton.

Property. Debtor Cynthia Lorick testified that she listed the payment as \$2,500 for “legal fees” on the Debtors’ July 2017 monthly operating report [Dkt. No. 79].⁷ [**Exhibit D**, October 6 Hearing Tr. 77:20-78:14]. Debtor Boysin Lorick testified that he gave Choudhary a check for \$25,000 around July 2017 for the expenses Choudhary incurred while seeking financing for the Property. [October 6 Hearing Tr. 97:1-11; 98:2-9].

28. A \$25,000 payment to a debtor’s friend for his “expenses” in attempting to obtain financing for a debtor cannot be considered use of property of the estate in the ordinary course of business. Thus, the Debtors required Court approval for such a payment pursuant to section 363 of the Bankruptcy Code.

29. The Debtors have shown that an inherent conflict of interest exists between the Debtors’ personal interests and their duties as fiduciaries to the estate. The Debtors continue to seek financing for the Property without success. In pursuit of this endeavor, the Debtors have dissipated at least \$25,000 of which the Lender and this Court are aware. The Debtors have repeatedly contested the Sale. The Debtors continue to put their interests above their duties as fiduciaries to this estate and their creditors. “[T]he higher duty of the debtor as trustee/fiduciary must take precedence over the more self-interested concerns of the debtor . . .” *Bowman*, 181 B.R. at 844.

30. Further, it is clear that the Debtors have not accurately reflected their assets and liabilities and continuing income and expenses each month on at least two occasions. The estate continues to be diminished by the Debtors’ noncompliance and recalcitrance. As the Debtors

⁷ The bank statements attached to the July 2017 monthly operating report reflect a \$2,500 check dated July 18, 2017. The Debtors testified that TD Bank made an error, and the check was actually in the amount of \$25,000. The Debtors’ August monthly operating report reflects that the payment was, in fact, for \$25,000. [Dkt. No. 146 at 18] (“CHECK #1092678 POSTED AS \$2,500.00 SHOULD BE \$25,000.00.”).

continue to prevent the closing of the Sale, they have shown no efforts to make any progress toward a plan of reorganization nearly a year into this chapter 11 case and 16 months since the filing of the Debtors' chapter 13 case. A chapter 11 trustee would be able to close the Sale and proceed with administering the remainder of this case, including recovering the insurance proceeds, recovering improper payments to Mr. Choudhary, and distributing the proceeds of the Sale to creditors.

31. If past behavior is any indication, the Debtors will continue their pattern of defying court orders, collaterally attacking the Sale with the assistance of their proposed counsel, mismanaging the Property, converting property of others, and failing to use the Property for the benefit of creditors of the estate. It is in the best interests of creditors and the estate to appoint a chapter 11 trustee to oversee this case as the Debtors have shown that they are incapable of achieving an effective reorganization. Alternatively, this case should be converted to a case under chapter 7.⁸

CONCLUSION

The above-described behavior of the Debtors and status of this case call out for the appointment of a chapter 11 trustee to consummate the Sale and lead this case to an effective resolution, whether that be reorganization or liquidation. Although the Lender filed a motion to dismiss on March 23, 2017 [Dkt. No. 51] (the "Motion to Dismiss"), which is still pending, the Lender believes, following the recent events in this case and the revelations regarding the Debtors' use of estate funds and failure to account for more than \$153,000 in insurance proceeds, that the

⁸ Section 1112((b)(4) provides that "cause" for conversion includes gross mismanagement of the estate, unauthorized use of cash collateral substantially harmful to one or more creditors, and failure to comply with orders of the court. 11 U.S.C. § 1112(b)(4).

appointment of a chapter 11 trustee or conversion to a chapter 7 is now in the best interests of creditors and the estate.⁹

WHEREFORE, in view of the foregoing, the Lender respectfully requests that the Court enter an order substantially in the same form as the order attached here to as **Exhibit F**: (i) granting the Motion; (ii) appointing a chapter 11 trustee; or, alternatively, (iii) converting this case to a case under chapter 7 of the Bankruptcy Code; and (iv) ordering such other and further relief as is just and proper.

Dated: November 13, 2017

Respectfully submitted,

/s/ Colin M. Bernardino

Colin M. Bernardino, Esq. (Ga. Bar No. 054879)

(Admitted *pro hac vice*)

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*Counsel for Wells Fargo Bank, as Trustee for the
registered holders of Sovereign Commercial
Mortgage Securities Trust, 2007-C1, Commercial
Pass-Through Certificates, Series 2007-C1*

⁹ The Lender does not withdraw its Motion to Dismiss and reserves its right to continue to prosecute the Motion to Dismiss depending upon the outcome of the present Motion to Appoint a Chapter 11 Trustee.

EXHIBIT A

Contempt Order dated October 15, 2015

At an I.A.S. Trial Term, Part ^{con-6} of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 9 day of October 2015

P R E S E N T :

Hon. Knipel
Justice

Wells fargo Plaintiff(s)

Cal. No.

Index No. 500469/13

- against -

Boysin Lorick etal
Defendant(s)

The following papers numbered 1 to read on this motion

Notice of Motion - Order to Show Cause

and Affidavits (Affirmations) Annexed

Answering Affidavit (Affirmation)

Reply Affidavit (Affirmation)

Affidavit (Affirmation)

Pleadings - Exhibits

Stipulations - Minutes

Filed Papers

Papers Numbered

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2015 OCT 13 AM 9:35

KINGS COUNTY CLERK

Upon the credible evidence adduced at the evidentiary hearing held on 10/9/15, defendant Boysin Lorick is adjudged in Contempt of Court.

See minutes of hearing for the reasoning of the court. Cynthia Lorick is not in contempt. Cross motion is denied.

This case is adjourned to 11/6/15 for imposition of penalty, which may include a term of incarceration.

For Clerks use only

MG ☒MD ☒

Motion Seq. #

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9

ENTER

J.S.C.

EJV-rev 11-04

HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE

EXHIBIT B

Relevant Portions of November 7, 2017 Scheduled Closing Transcript

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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SOLEYMAN GHALCHI,

BUYER,

-against- Index No.:
 1-16-45645-NHL

BOYSIN RALPH LORICK and
CYNTHIA THERESA LORICK,

DEBTORS.
-----X

DATE: November 7, 2017
TIME: 3:40 P.M.

STATEMENT in the above-entitled
matter, held at the offices of Ortiz &
Ortiz, LLP, 32-72 Steinway Street, Suite
402, Astoria, New York 11103, before Kevin
Haghnazari, a Notary Public of the State of
New York.

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A P P E A R A N C E S :

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-and-
MARTHA J. DE JESUS, ESQ.
emal@ortizandortiz.com

ALSO PRESENT:
AVIV GHALCHI - Buyer's Son

* *

1 PROCEEDINGS

2 MS. ORTIZ: Judge Lord. Oh my
3 goodness. Can I strike that?

4 MR. ARYEH: Lord. I did the
5 same thing.

6 MS. ORTIZ: Judge Lord did
7 direct Mr. and Mrs. Lorick to appear
8 today, but I've explained the
9 circumstances that I've been
10 informed; and I've also asked
11 Mr. Lorick to speak on his own
12 behalf. Whatever he wants to say, he
13 had asked me to say some things; and
14 I think since he's here he should
15 place his statement on the record,
16 and then, Mr. Aryeh, whatever you
17 want, you can place on the record.

18 But I think, Mr. Lorick, am I
19 correct in saying that you will not
20 execute the quick claim deed today?
21 Is that correct?

22 MR. LORICK: Right, because I
23 don't have representation.

24 MS. ORTIZ: Okay. Do you want
25 to make your statement for this

1 PROCEEDINGS

2 gentleman so that he could --

3 MR. LORICK: My name is Boysin
4 Lorick and my statement is that, your
5 Honor, Judge Lord, you asked my
6 attorney to step down and tell him
7 you make him qualified or available
8 to become my attorney, and I respect
9 that. And I do respect also that you
10 give me an opportunity to represent
11 myself in any way, and I think I
12 still have those representation and I
13 ask respectfully for me to do have
14 those respect -- those
15 representation.

16 And since he's coming back on
17 Monday and my wife have therapy on
18 Tuesdays and Thursdays, I would like
19 to have a court hearing, and then we
20 set a date for the closing.

21 MS. ORTIZ: I would like to
22 say, Mr. Lorick, that Judge Lord
23 adjourned all hearings to
24 November 17th, next Friday. However,
25 there may be motions filed by people

1 PROCEEDINGS

2 based upon that, right now, I'm going
3 to direct to not respond to you. I
4 know that we responded to that
5 question to you many times, but
6 that's not what we're here for,
7 right? We're here about the closing,
8 and you brought your suit and that
9 can be heard in a different place,
10 okay?

11 Anything about this closing
12 that you want to say, other than what
13 you've said?

14 MR. LORICK: Well, I think from
15 the record, I wasn't, I wasn't
16 represented properly, and I was
17 misrepresented and underrepresented
18 by my attorneys and I would like to
19 look deeper into this before any
20 closing takes place. I appreciate
21 your concern and my concern, so that
22 we can look into it and see if there
23 were mistakes made, because I don't
24 think people's property should be
25 taken away from them because of

1 PROCEEDINGS

2 underrepresentation and
3 misrepresentation.

4 This, I felt very strongly of,
5 and I think it should be taken care
6 of before you go forward.

7 MS. ORTIZ: Okay. Mr. Aryeh?

8 MR. ARYEH: Mr. Lorick, you do
9 understand that Ms. Norma Ortiz is
10 still your attorney of record,
11 correct?

12 MR. LORICK: She said she
13 wasn't, so --

14 MR. ARYEH: It's a yes or no.
15 Sir, do you understand that as per
16 court's order, Ms. Norma Ortiz is
17 still your attorney of record?

18 MR. LORICK: No, I don't.

19 MR. ARYEH: Were you present
20 last week at the court hearing before
21 Judge Lord, where she indicated that
22 she will not sign any documents that
23 is not before her by Mr. Karam
24 Dahiya, your purported attorney,
25 until such time as Mr. Dahiya has

1 PROCEEDINGS

2 filed documents to be your attorney;
3 were you there for that?

4 MR. LORICK: I don't understand
5 the process. So, I can't say
6 anything else.

7 MR. ARYEH: Were you present at
8 court last week?

9 MR. LORICK: Yes, I was.

10 MR. ARYEH: Okay. Did you hear
11 Judge Lord directing you to provide
12 us, the buyer, with leases that has
13 to do with the property located 3126
14 Cony Island Avenue?

15 MR. LORICK: No, I don't want
16 to answer any question anymore.

17 MR. ARYEH: I'm sorry?

18 MR. LORICK: No.

19 MS. ORTIZ: Why don't you just
20 make your statement about the
21 closing, because if he feels that
22 he's --

23 MR. LORICK: Wait until my
24 attorney is here. I am not
25 represented yet, so I don't want to

1 PROCEEDINGS

2 answer anything.

3 MR. ARYEH: Okay. So, we were
4 ordered by Judge Lord, the bankruptcy
5 court judge presiding over this
6 chapter 11 petition filed by the
7 debtors/sellers, Mr. & Mrs. Lorick,
8 to appear for the closing today in
9 connection with the purchase of the
10 property located at 3126 Coney Island
11 Avenue, Brooklyn, New York.

12 Currently it is 3:50,
13 approximately, and Mr. Lorick is here
14 without his wife, Mrs. Lorick. The
15 buyer and myself, the attorney for
16 the buyer, are present at the Law
17 Office of Ortiz & Ortiz, which is
18 still the seller's attorney on record
19 and my client is ready, willing, and
20 able to move forward with the closing
21 and to consummate the purchase of the
22 property.

23 I mentioned before and to
24 further pay the remainder of the
25 purchase price by a bank check to the

1 PROCEEDINGS

2 order of Ortiz & Ortiz. However,
3 since Mrs. Lorick is not here and
4 Mr. Lorick has indicated he will not
5 sign any documents, we cannot move
6 forward with the closing. Mr. Lorick
7 and Mrs. Lorick will not be
8 delivering their required deed and
9 the necessary documents to us today.

10 As such, it was clear that,
11 one, the debtors have defaulted in
12 moving forward with the sale as one
13 of -- as -- since Mrs. Lorick has not
14 appeared for the scheduled closing
15 and even though Mr. Lorick is here,
16 he refuses to sign and does not have
17 power of attorney from Mrs. Lorick to
18 sign the required deed pursuant to
19 the terms of the memorandum of sale
20 and terms and conditions of sale.

21 Two, the debtors have failed to
22 transfer title regarding the subject
23 property pursuant to memorandum of
24 sale and terms and condition of sale,
25 and therefore, they have failed to

1 PROCEEDINGS

2 deliver insurable title as required
3 by the memorandum of sale and terms
4 and condition of sale on the date of
5 the closing, which is today,
6 November 7th, 2017.

7 Three, the debtors have failed
8 to turn over any of the leases for
9 the 38-unit apartments located at
10 3126 Coney Island Avenue, Brooklyn,
11 New York, pursuant to two court
12 orders.

13 Four, the buyers will no longer
14 be responsible for any fees or costs
15 associated with the property,
16 including, but not limited to
17 interest on the purchase price at a
18 nine percent annual fee.

19 And four -- I mean five. I'm
20 sorry. The extension of time to
21 close -- I'm sorry. Since the
22 closing is not going to take place
23 today for the reasons I have just
24 mentioned, I believe that we will be
25 entitled to the return of buyer's

1 PROCEEDINGS

2 down payment currently held by
3 Ms. Norma Ortiz.

4 We do have a hearing scheduled
5 on November 17th, 2017 before Judge
6 Lord, and as such, if Judge Lord
7 would like this to be closed on
8 November 17th, 2017, we will be
9 ready, willing, and able to do so on
10 that date.

11 We are not adjourning this
12 closing whatsoever. We believe the
13 buyer -- the sellers are default,
14 however, we will wait until
15 November 17th, 2017, and we'll extend
16 the closing until such date unless
17 otherwise ordered by court.

18 MR. GHALCHI: We have the
19 copies of the checks.

20 MS. ARYEH: All parties are
21 here for the closing. We do have
22 bank checks, a copy will be shown to
23 Ms. Ortiz, showing that the checks
24 are available and ready for today's
25 closing.

1 PROCEEDINGS

2 Just a quick note that
3 Mr. Lorick just indicated a few
4 minutes ago that he will wait until
5 Mr. Karam Dahiya to come back from
6 wherever he is in order to be able to
7 move forward to close.

8 I'm not sure if that means that
9 he is contemplating to actually close
10 in this matter, or he is just stating
11 that he will close, but his intention
12 is to wait and see what happens with
13 regards to the action he has brought
14 against various parties. I'm not
15 sure exactly what that means. If
16 Mr. Lorick would like to clarify, he
17 can. If not, then, we'll just move
18 forward with that.

19 MR. LORICK: I have something
20 to say.

21 MS. ORTIZ: I think in terms of
22 who you're going to speak to, and
23 then, inform your parties of your
24 course of action, okay? Right now, I
25 don't think you need to elaborate --

1 PROCEEDINGS

2 MR. LORICK: I need to
3 elaborate a little bit.

4 MS. ORTIZ: Okay.

5 MR. LORICK: Your Honor, you
6 have executed an auction which would
7 have had a big gathering in a
8 hotel-type setting, and that would
9 have brought me probably a better
10 deal and that wasn't carried out; and
11 this, this type of, of auction is --
12 that's more for just two legal people
13 in that auction. There's no way that
14 I can raise the right amount of money
15 and that's a wrongful auction, and
16 that's a Ponzi scheme in a court, and
17 I will stand up to that, because it
18 was a Ponzi scheme-type setup and it
19 should be redone.

20 It's an action that should be
21 redone the way you had explained it,
22 and you did write that there was a
23 timeline set up for all of this and
24 the timeline was never explained and
25 carried out properly.

1 PROCEEDINGS

2 It was -- I was short with time
3 to get this done, and I couldn't and
4 after I ask for an extension, it
5 wasn't given to me.

6 So, I think and I do need, and
7 I should be given the proper timing
8 and the consideration for this
9 property to be sold properly. If you
10 want to sell it or you want to give
11 it back to me, I'll give both
12 options, but the option is that there
13 should be the auction that you
14 described. It wasn't anything close
15 to it, and it should be redone.
16 Thank you very much, your Honor.

17 MR. ARYEH: One last thing. We
18 have brought checks, blank checks for
19 today's closing. We have made copies
20 of those checks. We have given the
21 copies of the checks to Norma Ortiz
22 and have shown them the -- have
23 showed her the checks, the actual
24 checks as well. I just want
25 Ms. Ortiz to state on the record that

EXHIBIT C

Relevant Portions of October 5, 2017 Hearing Transcript

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of:

BOYSIN RALPH LORICK AND
CYNTHIA THERESA LORICK,

Case No. 16-45645-nhl

Debtors.

U.S. Bankruptcy Court
271-C Cadman Plaza East
Brooklyn, New York 11201-1800

October 5, 2017

10:17 AM

B E F O R E :

HON CARLA E. CRAIG, CHIEF JUDGE
U.S. BANKRUPTCY JUDGE

1 Hearing re: Evidentiary Hearing RE: [108] ORDERED,
2 scheduling a hearing on Ghalchi's request for relief under
3 Federal Rule of Bankruptcy Procedure 9023 (RE: related
4 document(s) [96] Motion to Authorize/Direct filed by Creditor
5 Soleyman Ghalchi).

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25 Transcribed by: Dawn South, Sheila Orms, and Nicole Yawn

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8 BY: NORMA E. ORTIZ, ESQ.

9 MARTHA J. DE JESUS, ESQ.

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11 LAW OFFICES OF MARIYN MACRON, P.C.

12 Attorney for the Debtors

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16 BY: MARILYN MACRON, ESQ.

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24 BY: STEPHEN L. BARRY, ESQ.

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2 Attorney for the U.S. Trustee

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4 U.S. Federal Office Building

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6 New York, NY 10014

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25 BY: RICHARD J. MCCORD, ESQ.

1 CAROL A. GLICK, ESQ.

2

3 ALSO PRESENT:

4 BOYSIN RALPH LORICK

5 CYNTHIA THERESA LORICK

6 SOLEYMAN GHALCHI

7 AVIV GHALCHI

8 MOHAMMAD CHOUDHARY

9 JANE NADELSON, ESQ.

10 JACK GEULA

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1 Q And the answer to --

2 A I'd have to look at the schedules, but it shouldn't.

3 Q And it shouldn't because you believe that he was not a
4 prepetition creditor, is that your position?

5 A I've already testified that I had -- was not informed
6 by the debtors that Mr. Choudhary was a prepetition
7 creditor, and I didn't see any documentation in the debtors'
8 -- in the documents provided to me by the debtors that he
9 was a prepetition creditor, so I don't -- wouldn't expect to
10 see it here.

11 Q You also testified, is it not correct, that you were
12 not informed that he was a post-petition creditor, correct?

13 MR. BARRY: Objection, asked and answered.

14 THE COURT: Sustained.

15 BY MR. MCCORD:

16 Q In these schedules is there any reference to an asset
17 of a payment of funds as a result from -- from an insurance
18 company as a result of a fire at the premise in 2013?

19 MR. BARRY: Objection, relevance.

20 THE COURT: Overruled.

21 THE WITNESS: Would you restate the question?

22 BY MR. MCCORD:

23 Q Is there any reference in this exhibit, the summary of
24 assets and liabilities and related schedules, to the
25 recovery of a settlement from a fire at the subject premise,

1 3126 Coney Island Avenue, Brooklyn, New York, from an
2 insurance company?

3 A No, there is not.

4 Q Were you aware of the existence of a settlement?

5 A No, not until recently.

6 Q And when did you become aware of that?

7 A After Mr. Lorick's deposition.

8 Q And did you take any steps to amend any schedules after
9 you found that out?

10 A I contacted Mr. Lorick's former counsel, Frank Wharton
11 (ph), to determine whether he was holding funds for the
12 debtor, and through email correspondence he explained that
13 there was a 2014 check that was issued to the debtors, Wells
14 Fargo, the mortgagee, and I think -- and a contractor, and
15 he just provided me with the check -- a copy of the check
16 either yesterday or the day before, and I've spoken to the
17 U.S. Trustee about amending Schedule B. It's not clear why
18 he's holding a check since the first I learned of it was in
19 Mr. Lorick's deposition, and --

20 Q When was that, Mr. Lorick's deposition?

21 A Within the last week. I can't recall.

22 Q Was it after the sale hearing on August 24th, 2017?

23 A Yes.

24 Q And the discovery of this asset was after the sale
25 hearing on August 24th?

1 A Yes. Within the last two -- I think it was last week.

2 Q Did you amend Schedule B?

3 A No, I asked -- I didn't ascertain what the actual issue
4 potential asset was until yesterday.

5 Q And what did you ascertain yesterday -- what did you
6 discover yesterday?

7 A I just explained.

8 MR. BARRY: Objection, asked and answered.

9 THE WITNESS: I just answered your question.

10 THE COURT: Sustained.

11 BY MR. MCCORD:

12 Q Just -- you just discovered yesterday about this asset?

13 A What it --

14 MR. BARRY: Objection.

15 THE WITNESS: No, what it was.

16 MR. BARRY: Asked and answered.

17 THE COURT: Sustained.

18 THE WITNESS: I didn't attend Mr. Lorick's
19 deposition, so I wasn't there.

20 THE COURT: Okay. You know, you really should
21 respond only to questions asked, if you would, please.

22 THE WITNESS: Yes. I will try, Your Honor.

23 THE COURT: Is this being -- this will be marked
24 as Ghalchi 3? Is that correct?

25 MR. BARRY: Four, Your Honor.

1 THE COURT: Ghalchi 4. Okay. Okay. Thank you.

2 MR. MCCORD: Yeah.

3 (Pause)

4 BY MR. MCCORD:

5 Q I show you what's been marked as Ghalchi 4. Do you --
6 can you identify it?

7 A It looks like a copy of the check that I obtained from
8 Frank Wharton, the debtors' former counsel.

9 Q And when did you obtain it?

10 MR. BARRY: Objection, asked and answered.

11 THE WITNESS: I'm sorry?

12 BY MR. MCCORD:

13 Q No, you testified about it.

14 THE COURT: Okay. I'm going to -- I'm sustaining
15 the objection.

16 MR. MCCORD: Your Honor, for the record she asked
17 -- she answered about the knowledge of this occurring, but
18 she didn't -- I don't think she testified as to when she
19 received a copy of this check. But if you're sustaining it
20 you're sustaining it.

21 (Pause)

22 THE COURT: Mark it as Ghalchi 5, please.

23 BY MR. MCCORD:

24 Q I show you Ghalchi 5. Can you identify it?

25 A It's a copy of the application to retain my firm filed

1 obligation he wanted to be repaid for, meaning
2 Mr. Choudhary, by the debtor?

3 A I have had no indication that this was anything other
4 than someone applying for a loan. This transaction was done
5 so that it was -- the debtors were selling 10 percent of the
6 building in Brooklyn to somebody else, and that potential
7 buyer paid for financing. I did not see that as indication
8 that the buyer became a creditor of the estate.

9 Q Okay. Take a look at Exhibit 4, please. Should be a
10 check.

11 A It's one page?

12 Q Yeah.

13 (Pause)

14 Q What is it?

15 A It is a check from Brownstone Agency, Inc. from 2014.

16 Q And how much is it for?

17 A 153,356.

18 Q And who is it payable to?

19 A It is payable to multiple parties, Boysin Lorick, Wells
20 Fargo Bank, as trustee, Douglas Rosenberg (ph), Sovereign
21 Bank, Bercita (ph) Commercial Mortgage, LLC, as master
22 servicer, and the New York Adjustment Bureau, Inc.

23 Q Have you -- are you familiar with the circumstances
24 surrounding the issuance of this check?

25 A No.

1 Q As you sit here today, you're not familiar with it?

2 A I first saw this check yesterday. I am not familiar
3 with the circumstances that led to this check.

4 Q Who provided it to you yesterday?

5 A The former attorney for the debtors, Frank Wharton.

6 Q And was he involved with the debtors in the Chapter 13?

7 A I believe he was the attorney of record in the Chapter
8 13 case, yes.

9 Q And was that Chapter 13 filed in 2016?

10 A Yes, I believe so.

11 Q Was it dismissed?

12 A Yes.

13 Q Do you know when it was dismissed?

14 A I don't remember exact dates, no.

15 Q Was it dismissed shortly before the Chapter 11 was
16 filed in December 15th, 2016?

17 A I do not remember the dates.

18 Q Do you know why the Chapter 13 was filed?

19 A I believe it was due to a foreclosure sale that was
20 scheduled.

21 Q Was it the same foreclosure sale that was scheduled
22 that you filed a -- that your firm filed the Chapter 11 for?

23 A I believe so.

24 Q Stay?

25 A I believe it was the same legal proceedings, yes.

1 Q Did Mr. Wharton email you or your firm the -- both
2 sides of Exhibit 4 or just the front?

3 A I am -- don't understand your question.

4 Q You said you received that from Mr. Wharton yesterday,
5 correct?

6 A Yes.

7 Q Was it endorsed?

8 A No, I do not remember receiving anything other than
9 this page.

10 Q Do you know if that check was negotiated?

11 A I do not know.

12 Q Did you discuss it with Mr. Lorick?

13 A I did not discuss it with Mr. Lorick.

14 Q Is it in the schedules?

15 A We -- I do not believe it's in the schedules.

16 Q Did there come occasion where there was an auction for
17 the property?

18 A Yes.

19 Q Did you participate in that auction?

20 A I did.

21 Q And were you at the auction on August 22nd, 2017?

22 A I was.

23 Q How did you participate in the auction?

24 A I brought the documentations to the auction, and I
25 ensured that I had signed terms of sales from old bidders

EXHIBIT D

Relevant Portions of October 6, 2017 Hearing Transcript

1 UNITED STATES BANKRUPTCY COURT
2 EASTERN DISTRICT OF NEW YORK
3 Case No. 1-16-45645-nhl

4 - - - - - x

5 In the Matter of:

6
7 BOYSIN RALPH LORICK and
8 CYNTHIA THERESA LORICK,

9
10 Debtor.

11 - - - - - x

12
13 United States Bankruptcy Court
14 271-C Cadman Plaza East
15 Brooklyn, NY 11201

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17 October 6, 2017
18 10:08 AM

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21 B E F O R E:
22 HON. CARLA E. CRAIG
23 U.S. BANKRUPTCY JUDGE
24
25 ECRO: J. LECKY

1 HEARING re (Day 2) Evidentiary Hearing RE: [108] ORDERED,
2 scheduling a hearing on Ghalchis request for relief under
3 Federal Rule of Bankruptcy Procedure 9023 (RE: related
4 document(s) [96] Motion to Authorize/Direct filed by Creditor
5 Soleyman Ghalchi).

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25 Transcribed by: Sonya Ledanski Hyde

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21 BY: STEPHEN L. BARRY

1 **ALSO PRESENT:**
2 **BOYSIN LORICK - Debtor**
3 **CYNTHIA LORICK - Debtor**
4 **SOLEYMAN GHALCHI - Witness**
5 **MOHAMMAD CHOUDHARY - Witness**
6 **JANE NADELSON - Witness**

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1 A Yes.

2 Q Go to the third page. Do you see where it says
3 (indiscernible) Reorganization Expenses?

4 A Yes.

5 Q Legal Fees \$2,500?

6 A Right, yes.

7 Q Who prepared this document?

8 A I did.

9 Q And you put this entry in there?

10 A Yes, I did.

11 Q Is it accurate?

12 A No, it's not.

13 Q Why is it not accurate?

14 A Because at the time I was preparing it I was in Georgia
15 and Boysin was in New Jersey, and I questioned him, what was
16 the \$2,500 item? And he couldn't recall. And I think he
17 brought it to my attention that the check number was a very
18 unique number. It was not one of my check numbers. And so I
19 told him, I said, "I have to balance the books. Where do I put
20 it?" He said, "Okay, just put it in Legal Fees." What he didn't
21 realize is that that 2,500 was that \$25,000 check that I told
22 you about.

23 Q Testify to the Court.

24 A Okay. So, there was a \$25,000 check that Boysin wrote.
25 TD Bank encoded it as \$2,500. Because it was rejected, I did

1 not come up with one of my checks. So when I looked at my
2 register I couldn't identify the item. So, to balance my
3 books, I put it under Legal Fees. The following month, when I
4 did my overstatement, I saw that there was an adjustment of
5 22,500, which made up the 25,000. So then Boysin realized what
6 it was. He will have to explain that to you.

7 Q What do you understand what the \$25,000 was for?

8 A It related to a broker fee where they were trying to
9 obtain the loan to refinance the building. So, it should have
10 really gone under reorganizational...but because I didn't
11 realize the 2,500 related to the \$25,000 check, I put it in as
12 Legal Fees.

13 Q Where did the \$25,000 come from?

14 A Boysin will have to answer that.

15 Q (indiscernible)

16 A Boysin will have to answer that. Mr. Lorick will have to
17 answer that.

18 Q My question to you --

19 A It came over the account.

20 Q And where did the money -- how did the money get in the
21 account?

22 A Like I explained to you before, when the whole bankruptcy
23 thing started, and this was before Ortiz & Ortiz were involved,
24 Boysin had tried to secure a loan to refinance the building,
25 and there was a check for 22,891.14, I believe it was, that he

1 had given to this company. And I'm not sure what
2 (indiscernible) was from but...he eventually requested a
3 reimbursement. So they refunded him a check for 22,891.14.
4 And like I told you, if you look on July 13th, there's a
5 deposit for 22,941.30, which would be that 22,914 plus another
6 smaller check. So, out of those funds I think he reimbursed --
7 I'm not sure what that transaction was about. He will have to
8 explain it to you.

9 Q Was it a result of the payout from the fire, from the
10 insurance --

11 A No, no. No, it wasn't.

12 Q Were you in New York this past August for the auction on
13 August 22nd?

14 A No, I was in New Jersey. Georgia, sorry.

15 Q Were you here for the sale hearing on August 24th?

16 A No.

17 Q Did you participate in any way in either one of those
18 events?

19 A No.

20 Q Did you have any conversations with your attorneys or
21 anyone else with any of those events?

22 A With Boysin but that's it.

23 MR. MCCORD: All right, I don't have any further
24 questions.

25 CROSS-EXAMINATION OF MS. LOREY

1 Chapter 11 petition on December 29th, 2016?

2 A Yes.

3 Q Did you provide the information on this document in the
4 exhibit to Ms. Ortiz or Ms. De Jesus to file with the Court?

5 A I would say so.

6 Q Did they ask you to provide them with information
7 pertaining to all of your assets and liabilities?

8 A Yes.

9 Q And did you do that?

10 A Best of my knowledge.

11 Q Is -- are all your assets listed in there, and your
12 liabilities?

13 A Yes.

14 Q Okay. I'm going to ask you to look at Page 9 of Schedule
15 B ((indiscernible)). Okay. You see Number 35? Any financials
16 you did not already list?

17 A Yes.

18 Q Did you list the \$153,000, settlement proceeds from the
19 insurance company that you were paid as a result of the fire on
20 your property?

21 A It's not a settlement.

22 Q But did you list that money?

23 A No, because it's not a settlement yet.

24 Q So, is it your money or not your money?

25 A It's not my money yet.

1 Q It's payable to you. Can I -- let me just show you.

2 A It's still a ongoing case that's going on, and number two,
3 there's two sides to that. I told my attorney when we got a
4 check that that would his -- part of his payment.

5 Q And that attorney was Mr. Wharton?

6 A Yes.

7 Q And is that why he's holding the check?

8 A Well, no, he's still fighting the insurance company. It's
9 not a completed issue.

10 Q Please look at Exhibit G-4.

11 A Okay.

12 Q You see Exhibit G-4?

13 A Yes.

14 Q Have you ever seen it before?

15 A Yes.

16 Q What is it?

17 A It's a check, a copy of a check.

18 Q And do you recognize the account that it's drawn on,
19 (indiscernible) Agency, Inc., New York, on behalf of Aspen
20 American Insurance Company?

21 A Yes.

22 Q Is that your insurance carrier?

23 A Yes.

24 Q And was that -- did it hold a policy, a fire policy for
25 the building located at 3126 Coney Island Avenue, Brooklyn, New

1 York?

2 A Yes.

3 Q Was there a fire?

4 A Yes.

5 Q And is this a payment towards that expense?

6 A Yes.

7 Q And it's payable to Boysin Lorick, Wells Fargo as trustee,
8 Douglas Rosenberg, Sovereign Bank, Arcadia Commercial Mortgage,
9 LLC, and New York Adjustment Bureau; correct?

10 A Yes.

11 Q Was that check ever negotiated? Was it ever deposited,
12 cashed, cleared?

13 A Not that know of.

14 Q Why not?

15 A Because he said he had issues with the insurance company.

16 Q Do you believe that you're owed this money?

17 A For the damages, yeah.

18 Q You believe you're owed --

19 A No, I think the claim was higher and it's an ongoing case
20 right now.

21 Q And you're attorney that's handling this is Mr. Wharton?

22 A Yes.

23 Q Did you ever disclose this information to Ms. Ortiz or
24 anyone in her firm?

25 A No, because since I was paying them, I don't think it was

1 going to be part of my money, so, or anything of my --

2 Q You just said that you think you're owed more --

3 A At the time.

4 Q -- than \$153,000, correct?

5 A Say that again?

6 Q You just, a moment ago, testified you believe you're owed

7 more than 153,000.

8 A This is what he's claiming. He said there's more --

9 Q Not him, you.

10 A Well, the claim that I put in is more than 153.

11 Q How much is the claim?

12 A I don't recall this minute.

13 Q But it's more than 153,000?

14 A I'm pretty sure it is.

15 Q And did you disclose this information to Ms. Ortiz or

16 anyone in her firm?

17 A No, I didn't.

18 Q Is it reflected anywhere in the bankruptcy documents --

19 A No, it isn't.

20 Q Excuse me?

21 A No, it isn't.

22 Q Ask you to look at Exhibit G-9. Ask you to -- you

23 recognize that document?

24 A Yes.

25 Q What is it?

1 A I think it's a monthly report.

2 Q Is it for the period of July 1st through July 31st?

3 A Yes.

4 Q Third page, please. It says, "Legal fees \$2500." You see
5 that?

6 A Third page. (Indiscernible.) This would be third page,
7 okay.

8 Q You see that?

9 A Yes.

10 Q What is -- it says, "Legal fees \$2500." Is that accurate?

11 A Well, now, if I'm nitpicking it, it wasn't because it was
12 part of the fees we paid for updating the finance for the
13 building.

14 Q What do you mean nitpicking?

15 A Well, if you want perfect, maybe I wasn't too clear on how
16 I should get this put on the form, so I told my wife to put
17 legal fees.

18 Q Is that the way you approached all the other -- putting
19 information in all the other documents, that you didn't have to
20 be clear, that it's nitpicking to be --

21 MR. BARRY: Objection.

22 A I --

23 THE COURT: I'm going to overrule it. Go ahead.

24 Q You can answer the question.

25 A I don't say, I mean, there's words there and you could

1 fill them in, but it was a fee was paid to someone, I don't
2 know if you want to call it legal. In my opinion, it could be
3 a legal fee paying a broker. I don't know what you call a
4 legal fee, if it's all real lawyers who get legal fees, or if
5 other people that charge you things, you pay them, and it's a
6 legal fee for findings money for you. So, that's how I kind of
7 interpret it.

8 Q You believe a broker is an attorney?

9 MR. BARRY: Objection, Your Honor.

10 A I don't think -- I'm just saying --

11 THE COURT: I'm over -- okay. Okay. What did we
12 talk about before? What happens when somebody says the word
13 objection? Okay. I'm overruling the objection.

14 Q So, you think an attorney's a broker? Do you think a
15 broker that you're referring to is also an attorney?

16 A I didn't give that any thought apart from now. All I know
17 is I did, to perform legal stuff here.

18 Q The broker?

19 A Yeah.

20 Q Okay. But you authorize -- did you know that to pay a
21 broker or a lawyer you had to have -- while you were in
22 bankruptcy, you had to pay the -- you had to get the Court's
23 approval?

24 A No, I didn't.

25 Q Ms. Ortiz never told you that, or anyone from her firm?

1 A No.

2 Q And is this entry here accurate?

3 A Well, in my mind it's accurate.

4 Q Earlier this afternoon your wife testified that it was
5 \$25,000, not \$2500. Was she wrong?

6 A No, she was right.

7 Q Well, you just said it's accurate at 2500, and now you
8 said it's accurate at 25,000. Which is it?

9 A You asked me if the 2500 is accurate and I said yes, it
10 was part of it.

11 Q But then how can you tell me that her saying it's really
12 25,000 is accurate?

13 A Well, we didn't get -- you didn't get to that part.
14 You're accusing me before you get to it.

15 Q I'm not accusing you of anything.

16 A Yes, you are.

17 Q I'm asking you.

18 A You just accused me of something that you shouldn't.

19 THE COURT: All right.

20 A You asked me about the 2500 --

21 THE COURT: Okay. Stop. Stop, stop, stop. This is
22 not an occasion for you to have a conversation or for you to
23 argue, either of you. Either of you. Okay, I'm -- take --
24 your role here is to ask questions, as you know. Yours is to
25 answer them, okay? That's it. That's it. If there's any

1 issues or if you feel that there are -- if there are other
2 things that need to be said, your lawyer will bring them out on
3 cross-examination. But in any event, you answer questions.
4 You do not argue with Mr. McCord, okay?

5 MR. LORICK: I agree with that, but if --

6 THE COURT: Okay. No, no, no, no, no, no, no, no.
7 You also don't argue with me.

8 Ask your question.

9 Q Please explain whether this is \$25,000 or \$2500.

10 A That's \$2500.

11 Q Please explain what your wife meant when she said it
12 should be \$25,000, that the bank made a mistake.

13 MR. BARRY: Objection.

14 THE COURT: Sustained.

15 Q Did the bank make a mistake and should this be \$25,000?

16 A Yes, it should've been.

17 Q So, how can it be accurate at 2500 if it's -- you just
18 told me it's a mistake?

19 A I cannot argue with you if you say that's what it is.

20 Q Sir, I'm not -- as the Judge said, I'm asking questions.

21 A My answer is that I -- to phrase this properly creates an
22 argument so I can't do it.

23 Q You can't -- you cannot explain how it's accurate, but
24 you're saying it's accurate at 2500 when you just said it's a
25 mistake and it should be 25,000. You can't explain?

1 A All right. What happened here is that I gave Mr. Mohammad
2 the \$25,000 check.

3 Q You gave who?

4 A Mr. Mohammed. With all his expenses, this was part of my
5 --

6 Q You gave Mr. Mohammad Choudhary \$25,000?

7 A Yes, a check.

8 Q In July of 2017?

9 A Sometime around that time. And the \$25,000 he deposited
10 into his account. All right, the bank made a mistake. Instead
11 of 25,000, they put 2500.

12 Q Is Mr. Mohammad Choudhary the gentleman that -- the one
13 that you gave the 25,000 to the one we've been talking about
14 all along, the one that went to the auction?

15 A Yes.

16 Q A. Mohammad Choudhary?

17 A Yes.

18 Q Is he a broker? Is he a broker?

19 A Not that I know of.

20 Q Is he an attorney?

21 A No.

22 Q So, earlier in your testimony, you said that you gave to,
23 and your wife did also, that you gave this money to a broker.
24 That was all inaccurate? That was all false?

25 A You're mixing up two things here.

1 Q Please explain.

2 A I give Mr. Mohammad -- he was incurring expenses while I
3 was -- you see this is what happens here because I'm not free
4 to do what I want, would like to do, but he was -- and I was
5 surprised that he incurred all these expenses without an
6 agreement just by word of mouth, because I know him and he
7 knows me very well and I think he trusts me, and when this
8 money came into my possession I give him back some of it. This
9 was part of his payment. Now, the money that came to me,
10 that's a different issue, the 22,000. That came from --

11 Q Wait. Where did you get the 25,000 in July of 2017 to
12 give to Mr. Mohammad Choudhary if it's different than this
13 \$25,000? Where'd you get that money?

14 A I'm trying to explain to you.

15 Q Please do.

16 A The 22,000 came from a broker back in 2015 that was trying
17 to refinance the building for me. All right, something
18 happened and he had that money. The bank already got that
19 mortgage for me. And --

20 Q What bank?

21 A I don't recall the bank's -- the name of the bank, but it
22 was small branch. And they had the money in their possession.

23 Q How much?

24 A It was a \$30,000 check. He kept the rest as his fees, and
25 he gave me back 22,891, or something like that.

1 Q So the bank issued a check for 22,500 to you and 7500 to
2 him?

3 A I don't know what they did with the rest. He just told me
4 the rest was his fees.

5 Q And who told the bank to do this? Who instruct -- what --
6 this was your money, correct?

7 A Yes.

8 Q Did you tell the bank to do this?

9 A No. He was the middle person, so he got a check from me.

10 Q Yeah, but did you authorize him to get this check? Did
11 you agree that he should get this check to pay towards his
12 expenses?

13 A I still arguing over it, but right now I'm in the middle
14 of a bigger mess than that, so I'm leaving that on the side. I
15 don't know. He said it was his fees, and I didn't argue with
16 him.

17 Q So, did you authorize the bank to give him this check for
18 \$7500 in July of 2017?

19 A No, no. I give him a \$30,000 check.

20 Q All right. Did you authorize the bank to give him a check
21 for \$30,000 in July of 2017?

22 A You're going the wrong direction; yeah. I gave him a
23 check for \$30,000.

24 Q Where'd you get the check from? Where'd you get the money
25 from?

1 A Since 2015.

2 Q Okay.

3 A I don't think we're following each other here. This money
4 was owed to me from him.

5 Q From whom?

6 A He gave me back -- he gave me the rest of it.

7 THE COURT: I'm sorry. Who's the him here? Who's
8 him?

9 A David (indiscernible).

10 Q He's a broker?

11 A Yes.

12 THE COURT: Okay.

13 Q He owed you \$30,000. David (indiscernible)?

14 A Yes.

15 Q Okay. How did that \$30,000 get from David (indiscernible)
16 to Mohammad Choudhary that was owed to you?

17 A This have nothing to do -- you're getting it all mixed up
18 again. I --

19 Q Let's -- hold it. In July of 2018 --

20 THE COURT: 2018?

21 Q '17, did you -- in July of 2017, you stated a few moments
22 ago that you paid money to Mohammad Choudhary to go towards his
23 expenses, correct?

24 A Yes.

25 Q How much?

1 A 25,000.

2 Q 25,000. In this report, exhibit that you're looking at
3 right now, Exhibit G-9, it says \$2500 for legal fees, correct?

4 A Yes.

5 Q Your wife says it's -- the bank made a mistake and it
6 should really be \$25,000, correct?

7 A Yes.

8 Q And then your wife also said that 22,500 was credited or
9 deducted from your account by the bank in August, correct?

10 A No, that is a different bank.

11 Q Is that money related to this exhibit --

12 A Two different.

13 Q -- different than the 30,000 you gave Mohammad Choudhary?

14 THE COURT: Wait, wait, wait. 30,000?

15 MR. MCCORD: He said --

16 Q How much did you give Mohammad Choudhary in July, 25 or
17 30?

18 A 25.

19 Q Okay. Is the 25,000 that's reflected in this Operating
20 Report that's G -- Exhibit G-9, that 25,000 different than the
21 25,000 payment you made to Mohammad Choudhary in July of 2017?

22 MR. BARRY: Objection. The document doesn't reflect
23 25,000. It has been testified to repeatedly that it says 2500
24 but should be 25,000 for reasons that have been described.

25 MR. MCCORD: Exactly what I said.

1 MR. BARRY: No, you said, 25,000 as reflected in this
2 report.

3 MR. MCCORD: That's exactly what I said what he said.
4 But I agree with what he said.

5 THE COURT: Okay. Can you --

6 MR. BARRY: But this doesn't reflect --

7 THE COURT: Okay. I'm going to overrule the
8 objection.

9 Q Mr. Lorick, is it your testimony that you paid Mr.
10 Choudhary \$25,000 in July of 2018 --

11 MR. BARRY: Objection, asked and answered.

12 Q -- of '17?

13 THE COURT: Sustained.

14 Q Well I'm trying to clear up -- did you get the money that
15 you paid to Mr. Choudhary from -- as a refund from the money
16 you paid to the broker (indiscernible) --

17 MR. BARRY: Objection.

18 Q -- two years ago?

19 MR. BARRY: Objection, asked and answered.

20 THE COURT: Overruled.

21 MR. MCCORD: No, it's not --

22 THE COURT: Overruled.

23 A Yes, it was. That's where the funds came from.

24 Q Okay. Did you tell Mr. (indiscernible) to pay Mr.
25 Choudhary the 25,000 in July directly?

1 A No.

2 Q He paid it to you and then you paid it to Mr. Choudhary?

3 A Yes.

4 Q What bank account did you use to pay Mr. Choudhary the
5 \$25,000 --

6 A TD Bank.

7 Q -- in July of 2017?

8 A TD Bank.

9 Q Is that a Debtor in Possession account?

10 A Yes.

11 Q What bank account did you use to pay the bills in this G-
12 9, including this, at the time, the \$2500 that the bank
13 deducted? What bank account?

14 A The debtors' account.

15 Q I can't hear you.

16 A The debtors' account.

17 Q Is that the same account as the other TD Bank, or no?

18 A Yes.

19 Q So you had --

20 THE COURT: Was that a yes? Was that answer yes?

21 A Yes.

22 THE COURT: Okay.

23 Q So what -- in July of 2017, you believe you had a balance
24 of \$50,000 or more in that DIP account?

25 A How much?

1 Q 50,000?

2 A It could've. I --

3 Q Is the payment --

4 A I --

5 THE COURT: Wait, wait, wait. You have to let him
6 answer. He's --

7 MR. MCCORD: He said it could've. I'm sorry, if he
8 was finished.

9 Q I'm sorry. Proceed.

10 A I really don't do my books. My wife do all the financial,
11 so I don't know how much was in there, but in the past two
12 months, I -- my first time collecting Social Security, I they
13 give me a lump sum also that went in there, so there was extra
14 money. So, I had it, so I think it was the right thing to give
15 Mr. Choudhary back some of it that I owed him -- that he was
16 putting out money without looking back to see where it coming
17 from or if I'm going to give him back, so I think I had to show
18 him some good faith.

19 Q Did you tell your wife that you gave -- wrote a check to
20 Mr. Choudhary in the month of July, 2017 for \$25,000?

21 A Yes.

22 Q Is it reflected anywhere in this Exhibit G-9 the month of
23 the Operating Report that we're looking at right now?

24 A No, I don't think so.

25 Q Why not?

1 A Because it never got into the account. It did a month
2 later.

3 Q So, are you saying it'd be reflected in the August, 2017
4 report?

5 A Yes.

6 Q And has that been filed with the Court to date yet?

7 A (Indiscernible)

8 Q Yes?

9 A As far as I -- we are concerned. My wife and --

10 Q And your wife provided a copy of that report to Ms. Ortiz
11 and to -- or her office?

12 A Yes.

13 Q And it reflects all this -- these expenditures?

14 A Yes.

15 MR. MCCORD: Let the record reflect it -- that report
16 hasn't been filed with the Court.

17 THE COURT: Okay.

18 Q Could you please explain what from after December 15th,
19 for the beginning of the year, say through June or July, what
20 activities you had with Mr. Choudhary regarding getting
21 refinancing or sale of the building at 3126 Coney Island
22 Avenue, Brooklyn?

23 A I don't remember everything in detail, but it was ongoing
24 way of trying to refinance. What happened yet, is that when I
25 first started out with the bankruptcy, I -- pretty sure I

EXHIBIT E

Insurance Check Dated November 19, 2014

**BROWNSTONE AGENCY INC., NY ON BEHALF OF
ASPEN AMERICAN INSURANCE COMPANY**

J.P.Morgan

JPMorgan Chase Bank, N.A.
New York, New York
1-2-210

7031

PAY

TO THE
ORDER OF

ONE HUNDRED FIFTY-THREE THOUSAND THREE HUNDRED FIFTY-SIX & 03/100 DLRS
11/19/14 \$153,356.03

DATE

AMOUNT

BOYSIN LORICK, WELLS FARGO BANK,
N.A. AS TRUSTEE, DOUGLAS ROSENBERG,
SOVEREIGN BANK, BERKADIA COMMERCIAL
MORTGAGE LLC AS MASTER SERVICER
AND NEW YORK ADJUSTMENT BUREAU, INC

AUTHORIZED SIGNATURE

⑈007031⑈ ⑆021000021⑆

403168599⑈

**BROWNSTONE AGENCY INC., NY ON BEHALF OF
ASPEN AMERICAN INSURANCE COMPANY**

7031

Account Number:

Payment Number: 153356.03

Insured: BOYSIN LORICK

Claimant: BOYSIN LORICK

Date of Loss: 10/21/13

Type of Loss: FIRE

Location: 3126 CONEY ISLAND AVENUE BROOKLYN NY 11235

Policy No: BNY0002129-002

Policy Term: 12/07/12-12/07/13

Claim No: GPSD18471301

Check-No: 000007031

Check Date: 11/19/14

Comment: UND ACV BLDG - KEEP OPEN

Your Reference:

EXHIBIT F

Proposed Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Boysin Ralph Lorick and
Cynthia Theresa Lorick,

Chapter 11

Case No. 16-45645-NHL

Debtors.

-----X

ORDER APPOINTING CHAPTER 11 TRUSTEE

Upon the motion (the “Motion”) of Wells Fargo Bank, N.A., as Trustee for the registered holders of Sovereign Commercial mortgage Securities Trust, 2007-C1, Commercial Pass-Through Certificates, Series 2007-C1 for entry of an order, pursuant to section 1104 of the Bankruptcy Code, appointing a chapter 11 trustee in this case, or, alternatively, converting this case to chapter 7; and it appearing that the Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 157 and 1334; and it appearing that venue of the Debtor’s Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, creditors and all parties in interest and that the legal and factual basis set forth in the Motion establish just cause for relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The United States Trustee is directed to appoint, subject to the Court’s approval, a chapter 11 trustee to serve in this case.

3. Upon the chapter 11 trustee's appointment by this Court, the chapter 11 trustee is directed to take any and all necessary steps in furtherance of closing the Sale of the Property (as defined in the Motion).
4. The Court shall retain jurisdiction with respect to all matters arising from and related to this Order.

EXHIBIT G

Foreclosure Action Hearing Transcript

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS- CIVIL TERM-PART COMM 6

-----x
WELLS FARGO BANK, :
Plaintiffs, : INDEX NO.
-against- : 500469/2013
BOYSIN LORICK, et al., :
Defendants. :
-----x

H E A R I N G
360 Adams Street
Brooklyn, N.Y. 11201
October 9, 2015

B E F O R E:

HONORABLE LAWRENCE KNIPEL,
Judge.

A P P E A R A N C E S:

KILPATRICK TOWNSEND & STOCKTON LLP
1114 Avenue of the Americas
New York, New York 10036
BY: THERESE M. REYES, Esq., of Counsel
For the Plaintiff

TENENBAUM BERGER & SHIVERS LLP
26 Court Street
Brooklyn, New York 11242
BY: MARTIN TENENBAUM, ESQ.
For the Receiver, Douglas Rosenberg

FRANK WHARTON, ESQ.
One Pierrepont Plaza, Floor 12
300 Cadman Plaza West
Brooklyn, NY 11201
For the Defendant, Boysin Lorick

LISA L. DIMINO
SENIOR COURT REPORTER

1 THE COURT: Good morning, counsels. We have here
2 an order to show cause for contempt. And is there a
3 cross-motion?

4 MR. TENENBAUM: Yes, there is a cross-motion,
5 judge.

6 THE COURT: Notice of cross-motion by defendant.
7 Let's deal with the order to show cause, I guess we'll
8 deal with that first.

9 MR. TENENBAUM: You also have our affirmation in
10 opposition?

11 THE COURT: Affirmation in reply.

12 MR. TENENBAUM: Reply in opposition.

13 THE COURT: So, order to show cause. Whose order
14 to show cause?

15 MR. TENENBAUM: It's my order. Your Honor, if I
16 may, Warren Tenenbaum, Tenenbaum, Berger and Shivers. I
17 represent the receiver, Doug Rosenberg. It's our motion
18 to punish for contempt for failing of the respondent, of
19 the defendants, to succeed to the receiver's rights under
20 the order, to attorn to them for the security deposits,
21 and also, for out and out breaches of the order, itself.

22 I'd like to argue in a little bit unorthodox
23 manner. But, if I may, the cross-motion that was made
24 seeks relief saying that Douglas Rosenberg is not the
25 receiver, but that BPC is the receiver, which I find to be

1 electrician, could not be paid.

2 MR. TENENBAUM: Judge, he's testifying.

3 THE COURT: All right. I'll take his comments as
4 summation, not as testimony. It's not testimony. I can't
5 take it as evidence. But, I'll take your argument to the
6 extent it bears upon summation. Go ahead.

7 MR. WHARTON: And is, as well, a part of the
8 papers in support, your Honor. In addition to that, your
9 Honor, if my client did anything with respect to the
10 removal of the garbage and what he testified to, he did so
11 in a matter that I also described in my affirmation as an
12 exhibit, as the person who spent a lot of his own money to
13 rehabilitate this building, faced with the Sandy event,
14 faced with a fire and then is faced now with what he finds
15 repugnant to his property, the build-up of garbage, the
16 place not being taken care of.

17 And he did what he did as a caring and honest
18 owner and landlord, even though at some point shortly
19 following the receiver or the alleged receiver began to
20 function in the manner that the receiver was expected to
21 function. Whatever Mr. Lorick did, he did because of
22 inactivity by this receiver with respect to those
23 functions.

24 Your Honor, let me close up by saying that we'll
25 turn over what there can be turned over, but I mentioned

1 in this summation that there's nothing to turn over.
2 There are no security deposits. Mr. Lorick spent that and
3 whatever other money from his own pocket to pay for the
4 fire repair, to pay for the --

5 THE COURT: He spent the security deposits?

6 MR. WHARTON: He spent the security deposits.

7 THE COURT: Isn't that a crime? You realize what
8 you're saying?

9 MR. WHARTON: Not in these circumstances.

10 THE COURT: Do you realize what you're saying?

11 MR. WHARTON: There is a clear defense to this,
12 your Honor. I do understand what I'm saying with respect
13 to that, the health and welfare of the tenants took
14 priority. And in that circumstance --

15 THE COURT: You think that entitles your client to
16 take the tenants' money and spend it?

17 MR. WHARTON: The tenants weren't paying rents
18 and the security deposit was utilized --

19 THE COURT: Okay.

20 MR. WHARTON: --to repair the building, as well.

21 THE COURT: Okay.

22 MR. WHARTON: There's another exhibit there, as
23 well, that shows the amount of money from those tenants
24 who weren't paying during that period. So, my client
25 acted responsibly. He acted in a matter that was